

REMARKS

A Request for Continued Examination was filed on May 7, 2008, in the above application, with pending claims 1-21, 23-39 and 55-58. In the Final Office Action dated February 7, 2008, claims 3-7, 23 and 24 were withdrawn from consideration, and claims 1, 2, 8-21, 25-39 and 55-58 were finally rejected. In this amendment, claims 1, 9, 11-13, 16-20, 25, 28-30, 33, 38, 55, 57 and 58 are amended, and claims 3-8 are cancelled. Reconsideration of the present application as amended and including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested.

Applicant's representative thanks Examiner Comstock for the courtesy of the telephonic interview extended on May 29, 2008. In the interview, independent claims 1 and 25 were discussed along with the cited Livingston reference (U.S. Patent No. 2,699,774.) Agreement was reached that claims 1 and 25 could be amended to distinguish Livingston, and the amendments to claims 1 and 25 are believed to reflect that agreement.

Claim 1 is amended above to recite, among other features, "an elongated stabilization device including an elongated outer member and an elongated inner member movably received in said outer member, said inner and outer members each including a curved configuration along a longitudinal axis that extends along a length of said stabilization device between a leading end and an opposite trailing end of said stabilization device, said stabilization device further maintaining said curved configuration when in a collapsed insertion configuration and an expanded engagement configuration, wherein said curved configuration forms an arc along a length of said stabilization device and said arc and said longitudinal axis are co-linear along said length...." Support for the amendments may be found through the specification and drawings at, for example, paragraphs [0030], [0034]-[0039] and Figures 6-8 of the publication of the present application. Livingston fails to disclose several features in claim 1. For example, Livingston discloses that rod 37 is linear when shell 19 is collapsed and when shell 19 is enlarged. Thus, claim 1 is allowable and withdrawal of the rejection thereof is respectfully requested.

Pending claims 2, 9-21, 57 and 58 depending from claim 1 distinguish Livingston at least for the reasons claim 1 does and for reasons provided in previous responses which will not be repeated herein. Claims 9, 11-13, 16-20, 57 and 58 depending directly or indirectly from claim 1 have been amended to maintain consistency with amended claim 1 and to improve form and readability.

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Livingston also does not disclose amended claim 25. Amended claim 25 recites, among other features, "an elongated stabilization device having a length extending along a longitudinal axis between a leading end and an opposite trailing end ... said stabilization device including an elongated outer member and an elongated inner member, said inner member being movable in said outer member between a first position wherein said stabilization device includes a reduced profile for insertion in the pathway and a second position wherein said inner member engages said outer member to provide at least a portion of said stabilization device with an enlarged profile for engagement to bony tissue along the pathway, wherein said inner member and said outer member each include a curved configuration along said longitudinal axis that extends along said length of said stabilization device between said leading end and said opposite trailing end of said stabilization device, and in said curved configuration each of said inner member and said outer member forms an arc that is co-linear with said longitudinal axis along said length of said stabilization device." Support for the amendments may be found through the specification and drawings at, for example, paragraphs [0030], [0034]-[0039] and Figures 6-8 of the publication of the present application. Livingston fails to disclose several features in claim 25. For example, Livingston discloses that rod 37 is linear when shell 19 is collapsed and when shell 19 is enlarged. Thus, claim 25 is allowable and withdrawal of the rejection thereof is respectfully requested.

Pending claims 26-39 and 55-56 depending from claim 25 distinguish Livingston at least for the reasons claim 25 does and for reasons provided in previous responses which will not be repeated herein. Claims 28-30, 33, 38 and 55 depending directly or indirectly from claim 25 have been amended to maintain consistency with amended claim 25 and to improve form and readability.

Reconsideration of the present application as amended and including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested. The application is believed in condition for allowance, and a Notice of Allowance is hereby solicited.

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